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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/207,972	12/09/1998	MARK I. GARDNER	5500-36100	7507

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EXAMINER

WARREN, MATTHEW E

ART UNIT	PAPER NUMBER
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2815

DATE MAILED: 01/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/207,972

Applicant(s)

GARDNER ET AL.

Examiner

Matthew E. Warren

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24-29, 32 and 33 is/are allowed.
- 6) ☒ Claim(s) 16-22, 30 and 31 is/are rejected.
- 7) ☒ Claim(s) 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

This Office Action is in response to the Board of Appeals Decision rendered on November 6, 2003.

Response to Board Decision

In view of the Board of Appeal's Decision to Remand rendered on November 6, 2003, PROSECUTION IS HEREBY REOPENED. A new grounds of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16-19, 21, 23, 30, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kizilyalli et al. (US 6,548,854 B1) in view of Wu (US 5,880,508).

Kizilyalli et al (fig. 1) a semiconductor device comprising a semiconductor substrate (2) and low trap density oxide layer (3) formed on the substrate (col. 3, lines 23-25). A high dielectric constant film (4), such as the metal oxide tantalum pentoxide, is formed on the oxide layer (col. 2, lines 56-67). Ta_2O_5 has a dielectric constant of which is greater than 5 or 20 as cited in the applicant's claimed invention. A gate conductor (6) is arranged on the high dielectric constant film. The silicon oxide film is less than about 10 angstroms thick (col. 2, lines 40-45). Kizilyalli et al. shows all of the elements of the claims except the low trap density layer (oxide layer) having nitrogen which Wu discloses (col. 1, lines 38-43) to reduce leakage currents in the layer. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the low trap density layer of Kizilyalli et al by adding nitrogen as taught by Wu to suppress leakage current in the layer.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kizilyalli et al. (US 6,548,854 B1) in view of Wu (US 5,880,508) as applied to claim 16 above, and further in view of Chou (US 5,994,734).

Kizilyalli in view of Wu shows all of the elements of the claims except the additional gate dielectric and gate conductor formed between the nitrogen-containing oxide and the substrate. Chou shows (figs. 3f, 3g) a semiconductor device having an additional gate conductor layer (23) and a gate dielectric (22) formed between a

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dielectric stack and the substrate (20) to form a non volatile memory device. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the semiconductor device of over Kizilyalli in view of Wu by adding an additional gate conductor and dielectric as taught by Chou to form a non volatile memory device.

Allowable Subject Matter

Claim 22 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 24-29, 32, and 33 are allowed.

The following is an examiner's statement of reasons for allowance: the prior art references, alone or in combination, do not show a semiconductor device having the combination of a low trap density nitrogen containing oxide on a semiconductor substrate, the nitrogen containing oxide having a thickness less than 10 Angstroms and high-K dielectric on the nitrogen containing oxide, wherein the high-K dielectric has thickness less than 10 Angstroms also.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Response to Arguments

Applicant's arguments with respect to claims 16-21, 23, 30, and 31 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew E. Warren whose telephone number is (703) 305-0760. The examiner can normally be reached on Mon-Thurs, and alternating Fri, 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Thomas can be reached on (703) 308-2772. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

MEW

January 7, 2004



**ALLAN R. WILSON
PRIMARY EXAMINER**